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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 106

CAMPBELL SOUP COMPANY,
Petitioner,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 8, AFL-CIO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINIONS BELOW.

Correctly stated in the petition.

JURISDICTION.

Correctly stated in the petition.

QUESTION PRESENTED.

The questions presented by petitioner do not fully and sufficiently describe the issues. The question more adequately formed would be:

Whether an arbitrator acting under a broad delegation

of authority, after a full and regular hearing, who reinstates an employee who has breached a company rule against gambling was faithful to his obligation and substantially followed this Court's guide lines.

ARGUMENT.

This Court is asked to review an order of the Seventh Circuit enforcing a run of the mill arbitration award. The agreed issue to be decided by the arbitrator was whether the grievant was discharged for cause, and if not, what would be the proper remedy. The arbitration clause was almost identical to that in *Enterprise*[1] and falls within the ambit of the normal type of arbitration clause which this Court has characterized as the "standard form of arbitration clause."[2]

The arbitrator acting under this broad delegation found that the discharge was improper and ordered that the employee be reinstated without back pay.

1. There Is No Conflict In The Circuits.

Judge Marshall's decision in *Local 453, International Union of Electrical Workers* v. *Otis Elevator Co.*, 314 F. 2d 25 (2nd Cir. 1963), *cert. den.*, 373 U. S. 949 (1963), was relied upon by the Seventh Circuit with the observation that:

> . . . while there are some factual differences between the case before us and the Second Circuit's decision, we think the District Court could well have found substantial support, as we find, in the court's reason-

1. *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593, 594 (1960).

2. *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 571 (1960).

ing in that decision, with respect to double punishment.[3]

Judge Lynch, in granting plaintiff's motion for summary judgment, observed that:

> In *Otis Elevator,* the Second Circuit considered a situation nearly identical to the one facing this court. The arbitrator's award was affirmed. In the absence of any contrary precedent in the Seventh Circuit, this court feels that the *Local 453* case is controlling.[4]

Petitioner makes the same arguments which were raised in the *Otis* petition for certiorari. All that has happened since this Court denied certiorari in *Otis* in 1963 is the full acceptance of the Second Circuit *Otis* precedent by the Seventh Circuit.

2. The Arbitrator Did Not Act Arbitrarily Or Capriciously Nor Did He Impose His Concepts Of Justice.

It is argued that the arbitrator dispensed his "own brand of industrial justice" by disregarding a long standing rule, by finding the rule unreasonable, and by considering the employee's post discharge conduct in determining whether discharge was the proper remedy.[5]

The Seventh Circuit rejected this contention with the comment:

> We think it is clear from the issue submitted to the arbitrator that he was faithful to his obligation and substantially followed the Supreme Court guidelines in *Enterprise.*[6]

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3. Petitioner's Appendix A, p. A7, hereinafter referred to as P. A.

4. P. A., p. A11.

5. Petition, p. 2.

6. P. A., p. A3.

The almost identical arguments were rejected by Judge Marshall in *Otis* when he held:

> Having bargained for the decision of the arbitrator on the question whether [the grievant's] conduct and criminal conviction constituted "just cause" for discharge, the parties are bound by it even if it be regarded as unwise or wrong on the merits . . .
>
> * * * * *
>
> To separate the just cause for discharge from the injust was precisely what the parties clothed the arbitrator with the authority to do. If the employer wanted the automatic right to discharge an employee for violation of certain company rules or for the commission of certain crimes, whether on or off the company premises, it had the opportunity to seek such an explicit exclusion from the general arbitration clause when the collective bargaining agreement was negotiated, as it may do when the collective bargaining agreement expires.
>
> In the absence of such a clause, the decision of the arbitrator in the present case must be taken as conclusively establishing as a matter of contract interpretation that the discharge of [the grievant] was not for just cause and as foreclosing judicial review of the merits of the question.[7]

Judge Kiley, speaking for the Seventh Circuit, almost echoed Judge Marshall's conclusions by stating:

> We see no merit in Campbell's argument that the arbitrator exceeded his authority in deciding the "reasonableness of the punishment" could be challenged and that the conviction was of a lesser offense, or that Kmiec had learned his lesson. Under the broad clause in the bargaining agreement and the direction in the submission, the arbitrator was free to do what he did in the award. We have no power to substitute our judgment for that of the arbitrator on the merits.[8]

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7. *Otis*, at 28.
8. P. A., p. A7.

CONCLUSION.

For the foregoing reasons and because the national policy of encouraging arbitration can be best effectuated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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